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C O N F I D E N T I A L SECTION 01 OF 04 BAGHDAD 003229

SIPDIS

E.O. 12958: DECL: 12/14/2029  
TAGS: [PREL](#) [PGOV](#) [KDEM](#) [UNSC](#) [IZ](#)  
SUBJECT: THE U.S. POSITION ON ARTICLE 140 AND KIRKUK

REF: A. BAGHDAD 3157  
[1](#)B. BAGHDAD 1054  
[1](#)C. BAGHDAD 2379 (NOTAL)

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Classified By: Ambassador Chris R. Hill for reasons 1.4 (b) and (d)

[1](#)1. (C) SUMMARY: Calls by POTUS and VPOTUS to Kurdistan Regional Government (KRG) President Masoud Barzani were critical in forging consensus approval of an election law compromise proposal. The related White House statement of December 7, including affirmation of respect for Article 140 in connection with Kirkuk and other disputed internal boundaries (DIBs), represented previously stated U.S. policy. Nonetheless, Kurdish, Arab and Turkoman interlocutors have publicly and privately expressed the belief that the POTUS and VPOTUS calls to Barzani, together with the White House statement, represent a deal by which the KRG agreed to accept a consensus agreement on the election law in exchange for U.S. support of a process that would lead to the eventual annexation of Kirkuk into the Iraqi Kurdistan Region (IKR). Under this interpretation, the U.S. would support a census followed by an "up or down" (vice "confirmatory") referendum in Kirkuk on whether the province should become part of the IKR, an approach favored by the KRG. Part of the problem is semantic: a range of interlocutors have stressed that "implementation of Article 140" has come to represent - especially from the Kurdish perspective - shorthand for a process that would facilitate annexation of Kirkuk into the IKR. Given Kirkuk's potent symbolism, the apparent attempt to construe the POTUS/VPOTUS conversations and White House statement as supporting Kurds' claim to Kirkuk have potentially grave implications for stability in the DIBs areas in general and Kirkuk in particular. The Embassy intends to use the points at para 10 in publicly discussing the U.S. position, and believes those at para 11 should be privately conveyed to relevant interlocutors. End summary.

WHITE HOUSE STATEMENT CONFIRMS EXISTING U.S. POLICY  
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[1](#)2. (C) As reported ref A, calls by POTUS and VPOTUS to Kurdistan Regional Government (KRG) President Masoud Barzani on December 6 were critical in breaking the logjam to permit consensus approval of an election law compromise proposal. The related White House statement of December 7 reaffirmed respect for the Iraqi constitution, including Article 140 (which addresses Kirkuk and other disputed internal boundaries), underscored the U.S. commitment to help resolve outstanding issues between the KRG and GOI and pledged U.S. support for a census to help facilitate the conduct of future elections. The White House statement, including affirmation of respect for Article 140 in connection with Kirkuk and other DIBs areas, did not represent a departure from previous

U.S. policy.

PREVIOUS ENGAGEMENT ON KIRKUK & DIBS

13. (C) As reported ref B, then SRSG deMistura - together with the then U.K. and Czech ambassadors (the latter represented the EU) and U.S. POL M/C - met with Barzani in Erbil in mid-April to preview the UNAMI DIBs report. In that presentation, it was made clear to Barzani that: 1) the Iraqi constitution is the starting point for resolving DIBs issues; 2) Article 140 of the constitution must be respected, and this means there needs to be a census and referenda on disputed boundaries; 3) the arrangements to resolve the DIBs issue would be transitional, and; 4) there should be a concrete follow-up mechanism (later formalized as the High Level Task Force under UNAMI auspices). The critical point, underscored by the SRSG, U.S. POL M/C and others, was that referenda on DIBs should be "confirmatory", i.e., local populations would vote to confirm politically-negotiated consensus agreements. Implementation meant a negotiated deal and then a referendum in places like Kirkuk.

14. (C) On Kirkuk, in both the SRSG's presentation to Barzani and the UNAMI DIBs report, the UN identified four alternative approaches: 1) political agreement on reformulating Article 140 to clarify how a referendum would be conducted and securing political agreement on those details; 2) political agreement on a constitutional amendment by which Kirkuk would remain a governorate not organized into a region (as other Iraqi governorates are); 3) establish Kirkuk as a governorate or region with links to both Baghdad and the KRG (the so-called "dual nexus" approach), or; 4) establish Kirkuk as a governorate or region with "special status" and a high

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degree of administrative self-rule, which would be determined through a negotiated political agreement and confirmatory referendum. The U.S. has publicly affirmed support for the DIBs report - which identifies, but does not prescribe, possible solutions - and for the HLTF as the mechanism by which UNAMI and designated senior KRG and GOI interlocutors negotiate on DIBs-related issues, including Kirkuk. In ref C, the Embassy proposed that the U.S. adopt a new policy on Kirkuk (including interim "special status" for Kirkuk until a final consensus-based resolution is achieved).

KURDS & OTHERS INTERPRET STATEMENT DIFFERENTLY

15. (C) Kurdish, Arab and Turkoman interlocutors have publicly and privately expressed the belief that the POTUS and VPOTUS calls to Barzani, together with the White House statement, represent a new development, that is a deal by which the KRG agreed to accept a consensus agreement on the election law in exchange for U.S. support of a process that would lead to the eventual annexation of Kirkuk into the IKR. Under this mistaken interpretation, the U.S. would support a census followed by an "up or down" (vice "confirmatory") referendum in Kirkuk on whether the province should become part of the IKR. (Comment: A range of interlocutors have underscored to Emboffs that "implementation of Article 140" has come to represent, especially from the Kurdish perspective, shorthand for a census followed by an up or down referendum. End comment.) In remarks broadcast on Kurdish satellite channel al-Fayha on December 13, Kurdish MP Saadi Barzinji (KDP) claimed there is a memorandum of understanding between the U.S. and KRG that includes "safeguards to ensure activation of Article 140 regarding the situation in Kirkuk". In an apparent reference to Emboffs' conversations with Kurdish Alliance List (KAL) bloc leaders during election law negotiations, Barzinji claimed the U.S. had provided such assurances to the KAL.

16. (C) Fuad Hussein, Barzani's Chief of Staff, told Kurdish

AK News on December 10 that Barzani agreed on the election law in exchange for "a sort of agreement with the American officials to achieve the constitutional rights of the Kurdish people", and said the White House statement represented "the first ever written guarantee for the Kurdish people." (Note: KRG officials have consistently maintained that implementation of Article 140, including in Kirkuk, is an immutable, constitutionally-mandated "right". End note.) In an apparent attempt to bolster the argument that the U.S. has taken their side, PUK media requested an on-camera interview with PRT Kirkuk on December 14 to confirm whether the U.S. mission in Iraq and the Kirkuk PRT support the recent White House statement supporting Kurdistan and the Kurdish people through implementation of Article 140.

17. (C) The KRG's Minister for External Relations, Falah Mustafa Bakir, told RRT Erbil Team Leader (TL) on December that while the Kurds deserved more seats as part of the election law deal, it was worth losing a few seats to get POTUS' commitments to protect Kurds' constitutional rights and the White House statement. Separately, Bakir told Deputy PolCouns on the margins of Secretary of Defense Gates' visit to Erbil on December 11 that KRG officials were "relieved" Qto Erbil on December 11 that KRG officials were "relieved" the U.S. had publicly supported a census and suggested KRG officials had interpreted the POTUS/VPOTUS calls and White House statement as constituting U.S. support for an up or down referendum on Kirkuk. Similarly, a senior PUK leader in Kirkuk told Kirkuk's PRT TL on December 8 he believed mention of Article 140 in the White House statement meant the U.S. supported an up or down referendum on Kirkuk's status.

18. (C) Hardline Sunni Arab MP Omar al-Jabouri (from Kirkuk) issued a public statement on December 10 calling on the GOI to demand from Washington an explanation of "guarantees on Kirkuk" given to Barzani and criticizing the Kurds for having conditioned agreement on the election law to U.S. assurances.

Sunni Arab MP Osama al-Nujaifi (from Ninewa) led a petition of 85 parliamentarians condemning alleged U.S. guarantees to the KRG as a "bilateral (U.S.-Kurd) understanding" that violated Iraqi sovereignty and ensured "triumph of one community (the Kurds) over the others (Arabs and Turkomans)."

He noted that the U.S. pledge to implement Article 140 was "a sure way" to exacerbate sectarian division. (Comment: Al-Jabouri and al-Nujaifi represent the most hardline Sunni Arab perspective on Kirkuk and DIBs issues; their views do not reflect those of more moderate Sunnis, including national leaders like Speaker al-Samarra'ie and Deputy Prime Minister al-Issawi. End comment.) Conceding the Middle Eastern

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penchant for conspiracy theories, senior advisors to Deputy Prime Minister Rafi al-Issawi told Deputy PolCouns on December 14 that "most" Arab MPs and ordinary Iraqis saw the White House statement as evidence of a deal between the KRG and U.S. by which Kirkuk would be annexed to the IKR. They urged a quick clarification of U.S. policy to tamp down surging Arab anger and prevent instability in the DIBs areas.

19. (C) Turkoman contacts in Kirkuk viewed the statement as a change in U.S. policy and feared the balance had shifted permanently against them and other minorities in the province, especially after concessions made regarding Kirkuk on the initial election law passed on November 8. On December 12, Arab and Turkoman members of Kirkuk's Provincial Council issued a statement condemning "confidential promises" between the U.S. and KRG on Kirkuk, calling on the GOI to demand clarification from the U.S., highlighting problems with implementing Article 140 and noting that an accurate census would be "impossible" unless Kurds are prevented from moving en masse into Kirkuk, Diyala, Ninewa and Salah al-Din provinces. Bruised by election law negotiations, Arab contacts told Kirkuk PRT Offs they saw the statement as a continuation of pro-Kurd behavior by the USG. Citing initial conversations with contacts after the White House statement was released, RRT Erbil expressed concern that Barzani

interpreted the POTUS and VPOTUS telcons to have encompassed more than was articulated in the White House statement. The KRG's Office of the Presidency chose to publish on its website a near-verbatim iteration of the message the SecDef conveyed in his meeting with Barzani on December 11; however, it significantly omitted the SecDef's remark that the U.S. commitment to help the KRG preserve its security, autonomy and prosperity envisioned doing so in the context of a unified Iraq.

CLARIFICATION NEEDED

¶10. (C) Given Kirkuk's potent symbolism, the apparent attempt to construe the POTUS/VPOTUS conversations and White House statement as supporting Kurds' claim to Kirkuk has potentially grave implications for stability in the DIBs areas in general and Kirkuk in particular. The Embassy intends to use the following points in publicly discussing the U.S. position:

-- The White House statement of December 7 on passage of Iraq's election law represents an affirmation of existing U.S. policy - it does not encompass any new commitments or agreements.

-- The United States supports the work of the High Level Task Force under UN auspices to resolve disputed internal boundaries (DIBs). These negotiations are concerned with determining internal administrative boundaries, not an international border.

-- The United States supports the work of the High Level Task Force under UN auspices to promote normalization, including resolution of property disputes, in Kirkuk and other DIBs areas.

-- All groups who call Kirkuk home - Turkomans, Arabs, Kurds and others - have an important role to play in helping to reach a consensus agreement on the status of Kirkuk.

-- Since 2005, the United States has supported the Iraqi constitution as the basis around which all Iraqis can protect their rights and work together to build national unity.

-- Any final resolution of the status of Kirkuk must guarantee individual and group rights as outlined in Iraq's Qguarantee individual and group rights as outlined in Iraq's constitution. It must respect freedom of expression, movement, employment and property ownership.

-- The United States remains ready to help the Government of Iraq conduct an accurate census next year as one element in support of future provincial and national elections to consolidate a stable Iraq with a government that is fair and accountable to the Iraqi people.

¶11. (C) In addition to the public points above, the Embassy believes the additional points should be conveyed privately to relevant interlocutors:

-- The United States supports a referendum to confirm the results of a negotiated, consensus-based resolution of

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Kirkuk's status.

-- The United States does not support a referendum to decide among possible solutions for Kirkuk's status; our view is that such a referendum is not obligatory under Article 140 of Iraq's constitution. Indeed, it would be harmful to Iraq.  
HILL